



May 1, 2001

Ms. Lisa M. Salina
Custodian of Records
City of Baytown
3200 North Main Street
Baytown, Texas 77521

OR2001-1779

Dear Ms. Salinas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146661.

The City of Baytown Police Department (the “department”) received a request for case number 1999-37878. You claim that certain portions of the requested information are excepted from disclosure under sections 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we address your assertion that portions of the submitted information are excepted from disclosure under section 552.117(2) of the Government Code. Section 552.117(2) generally excepts from disclosure “information that relates to the home address, home telephone number, or social security number” of a peace officer, or that reveals whether the peace officer has family members. However, section 552.117(2) only protects a peace officer’s 552.117 information in the context of his role as a “peace officer” and not as a “suspect,” “complainant,” or “victim” in a criminal investigation. Therefore, you may not withhold the information you have marked in green highlighting under section 552.117(2).

You also assert that portions of the submitted information are excepted from disclosure under section 552.117(4) of the Government Code. Section 552.117(4) generally excepts from disclosure the section 552.117 information of a peace officer who was killed in the line of duty. Here, there is no indication that the peace officer identified in the submitted information was killed in the line of duty. Therefore, you may not withhold the information you have marked in green highlighting under section 552.117(4).

Next, we address your argument that portions of the submitted information are excepted under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold the Texas driver's license numbers, license plate numbers, and motor vehicle registration information, which you have marked in pink highlighting, under section 552.130 of the Government Code.

We note that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 405(c)(2)(C)(viii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, the department should ensure that the numbers were not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, we note that section 552.023 gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interest. Because section 552.023 provides the requestor a special right of access to his client's social security number and section 552.130 information, the department must release to the requestor his client's social security number and Texas driver's license number.

To summarize, we conclude that: (1) the department may not withhold the information it has marked in green highlighting under section 552.117; (2) the department must withhold the Texas driver's license numbers, license plate numbers, and motor vehicle registration information, which it has marked in pink highlighting, under section 552.130; and (3) prior

to releasing any social security numbers, the department should ensure that the numbers were not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. The remaining information must be released to the requestor, including his client's social security number and Texas driver's license number.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen A. Eckerle".

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/tr

Ref: ID# 146661

Encl: Submitted documents

cc: Mr. James Randall Smith
Attorney at Law
1201 South Shepard
Houston, Texas 77019
(w/o enclosures)